

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI

**v.
HENRY L. SUTTON III**

RESPONDENT,

APPELLANT.

DOCKET NUMBER WD76304

DATE: April 22, 2014

Appeal From:

Pettis County Circuit Court
The Honorable Robert L. Koffman, Judge

Appellate Judges:

Division Three: Thomas H. Newton, Presiding Judge, Mark D. Pfeiffer, Judge and Cynthia L. Martin, Judge

Attorneys:

Richard A. Starnes, Jefferson City, MO, for respondent.

Margaret M. Johnston, Columbia, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI,

RESPONDENT,

v.

HENRY L. SUTTON III,

APPELLANT.

No. WD76304

Pettis County

Before Division Three: Thomas H. Newton, Presiding Judge, Mark D. Pfeiffer, Judge and Cynthia L. Martin, Judge

Henry Sutton appeals from the trial court's judgment convicting him of driving while revoked. Sutton claims that the trial court erred in denying his motion for judgment of acquittal because there was insufficient evidence to establish beyond a reasonable doubt that Sutton was operating a motor vehicle on a highway since Sutton was driving in a closed work zone.

Affirmed.

(1) The Supreme Court's determination in *State v. Seeler*, 316 S.W.3d 920 (Mo. banc 2010) that a closed work zone remains a highway as defined by statute is controlling.

(2) The evidence viewed in the light most favorable to the verdict does not support a conclusion that the center lane of Highway 65 where Sutton was driving was a closed work zone. The statutory definition of "work zone" suggests that work zones do *not* temporarily fall outside the scope of the statutory definition of "highway" as the definition sweeps within its ambit open portions of highway leading up to construction activity. Moreover, the evidence included testimony that the center lane was not marked by signage or barriers as "closed," and that Highway 65 remained open to traffic traveling in both directions throughout the slowly progressing painting operations in the center lane, with only flashing arrows mounted on two trucks signaling drivers away from the center lane.

Opinion by Cynthia L. Martin, Judge

April 22, 2014

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